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Brian Williams, Dwight Neven,
Marlyn Ortiz, and Vironica Banks*

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

BRETT COMBS,

Plaintiff,

v.

STATE OF NEVADA, *et al.*,

Defendants.

Case No. 2:18-cv-00337-JAD-BNW

**STIPULATION AND ORDER TO
EXTEND DISCOVERY AND
SCHEDULING DEADLINES**

(First Request)

Plaintiff Brett Combs, *pro se*, and Defendants Brian Williams, Dwight Neven, Marlyn Ortiz, and Vironica Banks, by and through legal counsel, Nevada Attorney General Aaron D. Ford, and Deputy Attorney General Matthew Feeley, hereby submit their Stipulation and Order to Extend Discovery and Scheduling Order Deadlines (First Request) pursuant to Fed R. Civ. P. 6(b)(1) and LR 26-3 for an additional six months.

MEMORANDUM OF POINTS AND AUTHORITIES

I. BACKGROUND

Plaintiff Brett Combs (Combs) filed a Civil Rights Complaint pursuant to 42 U.S.C. Section 1983 arising from events that allegedly occurred while Combs was previously incarcerated by the Nevada Department of Corrections (NDOC). Combs is presently an inmate incarcerated at USP Florence, a Federal Prison in Colorado. Defendants are current

1 and former employees of the NDOC. As the facility in which Combs is housed is a federal
 2 facility, it does not fall within the authority of the NDOC. None of the Defendants are
 3 associated in any way with the federal prison and undersigned counsel, Nevada State
 4 Deputy Attorney General Matthew Feeley, does not represent the federal facility or any of
 5 its employees.

6 Combs has been held under lockdown (presumably for security and COVID-19
 7 related reasons) and as such Combs has allegedly not had access to his law library or the
 8 ability to send out legal mail. Additionally, Combs and undersigned counsel have had
 9 difficulty in communicating with one another. Combs represents that he may soon be
 10 transferred back to Nevada and may be assigned to a halfway house wherein he would
 11 more freely be able to litigate his case as well as communicate with undersigned counsel.
 12 As such, Combs requests, and Defendants stipulate to, this present request for an extension
 13 to the remaining scheduling deadlines.

14 **II. PROCEDURAL HISTORY**

15 On May 6, 2019, Plaintiff Brett Combs, *pro se*, filed an Amended Complaint. ECF
 16 No. 8. On June 5, 2019, this Court issued a Screening Order, wherein this action was stayed
 17 for 90 days to allow the parties an opportunity to settle their dispute by way of an Early
 18 Mediation Conference (EMC). ECF No. 9. The EMC was ultimately held on October 11,
 19 2019 with no settlement reached. ECF No. 21.

20 On December 17, 2019, Defendants filed their Answer to Plaintiff's First Amended
 21 Complaint. ECF No. 28.

22 On June 11, 2020, the Court issued its Scheduling Order. ECF No. 32. The Court set
 23 the following dates:

24 Amend pleadings:	August 9, 2020
25 Close of Discovery:	September 8, 2020
26 Discovery Motions:	September 22, 2020
27 Dispositive motions:	October 8, 2020
28 Joint pretrial order:	November 8, 2020.

1 If dispositive motions are filed, the date for filing the joint pretrial order will be
 2 suspended until 30 days after a decision on the dispositive motions or until further order
 3 of the Court. ECF No. 32.

4 The parties hereby request an extension to the dates set by the current Scheduling
 5 Order.

6 **III. APPLICABLE LAW**

7 Fed R. Civ. P. 6(b)(1) provides in pertinent part:

8 When an act may or must be done within a specified time, the
 9 court may, for good cause, extend the time:

10 (A) with or without motion or notice if the court acts, or if
 11 a request is made, before the original time or its
 extension expires. . .

12 Additionally, Local Rule 26-3 (revised April 2020) provides as follows:

13 A motion or stipulation to extend any date set by the discovery
 14 plan, scheduling order, or other order must, in addition to
 15 satisfying the requirements of LR IA 6-1, be supported by a
 16 showing of good cause for the extension. A motion or stipulation
 17 to extend a deadline set forth in a discovery plan must be received
 18 by the court no later than 21 days before the expiration of the
 subject deadline. A request made within 21 days of the subject
 deadline must be supported by a showing of good cause. A request
 made after the expiration of the subject deadline will not be
 granted unless the movant also demonstrates that the failure to
 act was the result of excusable neglect. A motion or stipulation to
 extend a discovery deadline or to reopen discovery must include:

19 (a) A statement specifying the discovery completed;

20 (b) A specific description of the discovery that remains to be
 21 completed;

22 (b) The reasons why the deadline was not satisfied or the
 23 remaining discovery was not completed within the time limits
 set by the discovery plan; and,

24 (c) A proposed schedule for completing all remaining discovery.

25 **IV. ARGUMENT**

26 There is good cause to extend the remaining scheduling deadlines because Combs
 27 has been unable to litigate his case from the federal prison USP Florence.
 28

1 **A. Meet and Confer of the Parties**

2 Although not without difficulty, undersigned counsel has been able to recently
3 communicate with Combs. **Exhibit A**, Declaration of Counsel, at ¶5. Combs has an outside
4 contact by the name of Gale Sanders (Sanders). **Exhibit A** at ¶6; *see also* **Exhibit B**, email
5 from Gale Sanders; *see also* **Exhibit C**, email from Brett Combs. Sanders is the president
6 of Destination Freedom, a nonprofit organization created to assist prisoners. **Exhibit A** at
7 ¶6, *see also* **Exhibit B**, *see also* <https://destination-freedom.org/about-us>, last retrieved on
8 September 15, 2020. Sanders is not an attorney and does not represent Combs. **Exhibit A**
9 at ¶7.

10 Sanders contacted undersigned counsel and informed him of the service Corrlinks,
11 an email service for federal inmates. **Exhibit A** at ¶8; *see also* **Exhibit B**. Undersigned
12 counsel set up an account with Corrlinks and was able to exchange emails with Combs.
13 **Exhibit A** at ¶9; *see also* **Exhibit C**. Additionally, after numerous attempts, undersigned
14 counsel was able to set up a phone call with Combs which took place on September 10,
15 2020. **Exhibit A** at ¶11.

16 As explained in Combs' email, Combs "will stipulate to the continuance" and "I
17 (Combs) don't get on this much (Corrlinks) because we are locked down constantly and
18 there are 100 people trying to use 5 computers in an hour, same goes for the phones but
19 there are only 4 of them and people get 15 minutes on them a piece." **Exhibit C**. Combs,
20 anticipating being sent to a halfway house in Nevada, asked undersigned counsel for an
21 extension and the parties agreed to request an additional six months. **Exhibit A** at 12-15.

22 **B. Information Required by Local Rule 26-4**

23 **a. Discovery Completed**

24 On August 26, 2020, Combs served interrogatories on each of the defendants as well
25 as a combined request for production of documents on the defendants. Defendants have not
26 yet responded.

1 **b. Discovery that Remains to be Completed**

2 Defendants have yet to respond to Combs' discovery requests. Additionally, the
3 parties intend to propound additional written discovery on each other, and Defendants may
4 depose Plaintiff in this matter.

5 **c. Reasons Why the Deadlines Were Not Satisfied**

6 A request made after the expiration of the subject deadline will not be granted unless
7 the movant also demonstrates that the failure to act was the result of excusable neglect.
8 LR 26-4. Here, the parties can show that the reasons why the deadlines were not satisfied
9 were a result of excusable neglect.

10 Combs is being held in an out of state federal prison. Combs, as discussed in his
11 attached email, has had a difficult time with the case workers, has had case workers fail to
12 notify him of case information relating to this case as well as other cases in New Mexico
13 (NM), he is in lock down, he rarely gets to use the computers, he rarely gets to use the
14 phones, and he has been in and may return to quarantine. **Exhibit C.**

15 Undersigned counsel, a Nevada State Deputy Attorney General, is generally able to
16 facilitate communication with inmates held by the NDOC. However, here, undersigned
17 counsel has no such privilege or additional ability to do the same with an inmate held by a
18 federal prison in Colorado. Combs filed a Notice of Change of Address on May 17, 2018
19 instructing correspondence be sent to "my attorney" Dayton Parcels III in Los Angeles,
20 California. ECF No. 4. Dayton B. Parcels III however has not made an appearance in this
21 matter and has never made any indication that he represents Plaintiff. Although
22 undersigned counsel has been in contact with Gale Sanders, she is not an attorney and does
23 not represent Combs. Although Combs communicates through Parcels and Sanders, they
24 are not his counsel of record. Undersigned counsel has only recently been able to set up a
25 Corrlinks account to email with Combs; however, counsel cannot send discovery, or any
26 attachments via Corrlinks.

Combs incarceration in USP Florence in Colorado has made it difficult for both parties to conduct any discovery in this matter and the parties submit that this constitutes excusable neglect for not having done so.

d. Proposed Schedule for Remaining Discovery and Scheduling Deadlines

The parties propose the following new discovery and scheduling deadlines:

Close of Discovery: March 15, 2021

Discovery Motions: March 29, 2021

Dispositive motions: April 8, 2021

Joint pretrial order: May 7, 2021.

If dispositive motions are filed, the date for filing the joint pretrial order will be suspended until 30 days after a decision on the dispositive motions or until further order of the Court.

V. CONCLUSION

Plaintiff has allegedly been unable to litigate his claims from inside a federal prison. The parties have been extremely hampered in their ability to conduct discovery. Combs and undersigned counsel have spoken on the phone and agree that a six-month extension to the scheduling deadlines is appropriate.

Dated this 16th day of September, 2020.

Dated this 16th day of September, 2020.

IT IS ORDERED that ECF No. 34 is GRANTED in part and DENIED in part. ECF No. 34 is granted to the extent that the parties shall be given a four month extension of the deadlines they seek to extend. It is denied to the extent that the parties seek to extend the deadlines beyond four months. The parties may seek another extension if they cannot safely complete discovery in this time.

IT IS SO ORDERED

DATED: 9:55 am, September 21, 2020



BRENDA WEKSLER
UNITED STATES MAGISTRATED JUDGE

¹ Brett Combs is unable to sign this document, however, submits that he has agreed to this extension as stated in **Exhibit B**, Email from Brett Combs.

CERTIFICATE OF SERVICE

I certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on September 16, 2020, I electronically filed the foregoing **STIPULATION AND ORDER TO EXTEND DISCOVERY AND SCHEDULING DEADLINES (First Request)** via this Court's electronic filing system. Parties who are registered with this Court's electronic filing system will be served electronically. For those parties not registered, service was made by depositing a copy for mailing in the United States Mail, first-class postage prepaid, at Las Vegas, Nevada, addressed to the following:

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Plaintiff, Pro Se

/s/ Cathy L. Mackerl
Cathy L. Mackerl, an employee of the
Office of the Nevada Attorney General